*IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : March 21, 2007.
% Date of Decision : April 20, 2007.

+ W.P.(C) 14930-31/2006 & CM No.11787/2006.

DARSHNA DEVI & ANR. ..... Petitioner.
! Through Mr.Ravi Gupta with Ms. Puja Anand and Mr. Pushp Gupta, Advocate.

versus

$ D.D.A. ..... Respondent.
^ Through Mr.Rajesh Pathak, Advocate.

CORAM :-
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The wife of late Shri Nand Kishore, Smt. Darshna Devi and their minor daughter Ekta have filed this petition seeking a direction to the respondent Delhi Development Authority ('DDA') to allot to the petitioners accommodation a Category A under the Gadgil Assurance Scheme whereby persons like the late Shri Nand Kishore, who were displaced from Pakistan and migrated to India in 1947 were to be allotted plots

2. It is stated by the petitioners that Shri Nand Kishore was a refugee displaced person from Pakistan and who migrated to India at the time of partition of the country in 1947. He settled in Delhi since 1948 and was initially permitted to reside at T-5361, Block-8A, measuring 90 sq. yards in Western Extension Area (WEA) Karol Bagh. He was also issued a ration card showing the said address.

3. Pursuant to the provisions of Section 41 of the Displaced Persons (Compensation and Rehabilitation) Act, 1956 read with Rule 38 of the

Displaced Persons (Compensation and Rehabilitation) Rules, 1956 the Central Government through its Minister Shri N.V.Gadgil, announced in the Parliament that persons who migrated during partition and were in occupation of government plots would not be disturbed and would be allotted land for permanent rehabilitation. Consequently the Delhi Improvement Trust, predecessor of the Delhi Development Authority (DDA) permitted Shri Nand Kishore to occupy the aforementioned plot and charged Rs.4.50 per month as nominal damages from 1.1.1952 to 31.3.1962.

4. The DDA adopted 2 Resolutions dated 16.10.1970 and 22.11.1971 whereby area-wise list of persons eligible for allotment under the "Gadgil Assurance Scheme" was prepared. A total of 58 persons were found eligible in Block A for allotment of alternative land up to 200 sq. yards. By the subsequent Resolution dated 22.11.1971 it was decided that the eligible persons in Block 8 A, WEA would be around 51 and that each of them would get a plot of 85.6 sq. yards. It was decided that persons who had been occupying government land before 15.8.1950 would be given these alternative plots.

5. It is stated that the DDA sought to raise the damage charges from Rs. 4.50 for 90 sq. yards to Rs.450/- per month with effect from 1.4.1981 to 31.3.1982 and issued a demand letter dated 5.1.1983 on that basis. Protesting against this demand, Shri Nand Kishore made a representation on 18.10.1984. When no response was forthcoming he filed Writ Petition (C) No. 886 of 1985 in this Court challenging the demand and seeking a writ to the respondents to restrain them from dispossessing him from the property under his occupation.

6. During the pendency of that writ petition Shri Nand Kishore died and an application was filed to bring the petitioners herein on record. The writ petition came to be disposed of by the Division Bench of this Court by an Order dated 11.9.2001 which reads as under:

> "11.9.2001
>
> **CM No.9272/2001 in C.W. 886/1985**
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> Learned counsel appearing for the petitioner states that the petitioner has died. Learned counsel for the respondent states that the petitioner was entitled for allotment of land under category 'C' of the 'Gadgil Assurance'. She further syas, on instructions from Mr. Jagdish Chandra, Director (Lands), that in case the heirs of the petitioner are interested in allotment of land they can approach the concerned authority and furnish proof of their entitlement.
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> In view of the statement of learned counsel for the parties, the writ petition does not survive and the same is disposed of. The interim order stands vacated."

7. The petitioners then filed an application for recall of the said Order. On the said application the Court passed an Order dated 10.10.2001 in the following terms:

> "While there is no ground to recall the order dated September 11, 2001 we, however, permit the applicant to approach the concerned Director (Lands) with a representation that she is entitled to allotment of land under category 'A' of the Gadgil Assurance. In case the applicant is able to prove before the Director (Lands) that she is entitled to category 'A' allotment, the Director (Lands) shall pass an appropriate order.
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> Accordingly, the application is disposed of.
>
> Dasti on payment of usual charges."

8. Thereafter the petitioners filed a detailed representation before

the Director (Lands) pointing out that they were eligible to a category 'A' allotment. The representation made by the petitioners was placed before the Permanent Lok Adalat ('PLA') of the DDA presided over by Judge Shri S.M.Aggarwal. The proceedings dated 29.7.2003 of the PLA show that the petitioner No.1 was present and so were the representatives of the DDA. The PLA noted that initially the name of Shri Nand Kishore had been approved by the Committee in 1971 for allotment of accommodation in category 'A'. Later, on the complaint of one Shri Harbans Singh, Secretary of West Pakistan Refugee Association, the name of Shri Nand Kishore was removed from that list on the ground that Shri Nand Kishore's father Shri Chunni Lal who was a resident of Jhuggi No. 10,Plot No. T-5360 8A WEA Karol Bagh had a refugee certificate as head of the family and was allotted a plot as a category 'A' claimant.

9. The PLA noted that merely because the refugee certificate was issued in the name of the head of the family “it did not mean that Shri Nand Kishore was not a displaced person.” The PLA held that Shri Nand Kishore was residing separately in a Jhuggi in plot No. T-5361 8A WEA Karol Bagh and was entitled to an alternative plot in his own name. The PLA also referred to the Census of squatters Book No. 142/13 prepared by the MCD which show that Shri Nand Kishore was occupying a separate jhuggi No.11, 8A WEA Karol Bagh since 1948. He also had an original ration card bearing No. AF-96163 issued on 28.12.1948 issued in his name showing his age as 16 years and a subsequent ration card issued on 8.9.1950 showing Shri Nand Kishore's age as 18 years. The third document noticed by the PLA was an Order passed under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1970 assessing damages

against Shri Nand Kishore for land measuring 90 sq. yards in Block 8A for the period 1.1.1952 to 31.3.1962. Numerous other damage receipts were also produced before the PLA. Ultimately the PLA concluded as under:

> "In view of the aforesaid discussion case of the petitioner is proved and fully substantiated for including the name of Shri Nand Kishore now Smt. Darshana, petitioner for allotment of plot in category-A under the Gadgil Assurance Scheme. However, for the purpose of settlement the petitioner agrees to scale down her entitlement for allotment of accommodation in category-B for which I strongly recommend that the case should be finalized expeditiously as the petitioner has been suffering for in decision on the part of the DDA all these years. Case to come up on 9.9.2003."

10. Thereafter, on 25.5.2004 the PLA was informed that the Committee had approved allotment of plot under category 'B' in favour of the petitioners but possession could not be delivered since the High Court had stayed the delivery of possession. On 14.9.2004 the PLA was informed that the approval of the Vice-Chairman had to be obtained.

11. On 26.9.2005 a letter was issued in the name of late Shri Nand Kishore through Petitioner No.1 stating that she had been allotted a plot under Category 'B' measuring 25 sq. yards on perpetual lease hold basis in Block 8A itself. However at the hearing on 2.5.2006 before the PLA it transpired that the petitioners was still not being given the possession of the plot and this position continued on 25.7.2006. On that date the PLA passed the following Order:

> "Present: Smt. Darshna petitioner in person along with her counsel Smt. Pushp Gupta and Shri Giri Raj, Asstt. Director (OSB) DDA-Respondent.

The petitioner is a widow of late Shri Nand Kishore and has claimed allotment of accommodation in Category- A under the Gadgil Assurance Scheme as her husband was refugee and displaced person from West Pakistan and was a resident of Jhuggi No.2 8A, Plot No.5361 in WEA Karol Bagh since 1948.

Lok Adalat has considered the matter number of times and DDA ultimately has approved the allotment of plot measuring 25 sq. yards under category-B to the petitioner. The petitioner has also accepted this proposal of the DDA. The allotment letter was issued to the petitioner and, in fact, the mutation was also effected in her name.

When the case came up for hearing today the petitioner who is present in person has resiled from the statement and stated that the plot of 25 sq. yards is not acceptable to her and she is entitled to the plot of 85.6 sq. yards under category-A. The matter has been considered at length for her eligibility under category-A. The DDA is not agreeable for allotment of plot under category-A to the petitioner.

There is no meeting ground between the parties. The case is closed as unsettled. However, the petitioner is at liberty to approach the appropriate Forum/Court of Law for redressal of her grievances if she is so advised. However, it is made clear that the petitioner shall be at liberty to approach the DDA for allotment of plot under Category-B measuring 25 sq. yards.

Justice P.N.Nag.
Presiding Officer
PLA-DDA
25.7.2006.”

12. Thereafter the petitioners filed the present petition.

13. A counter affidavit was filed on 28.11.2006 by the Respondent DDA. It was mentioned that earlier the petitioner's case for category 'A' and 'B' type plots had been rejected because although the property

in question under the occupation of Shri Nand Kishore had been assessed for damages with effect from 1.1.1952, the petitioner could not produce any receipt. However thereafter since the petitioner "had submitted the damages notice with effect from 1.1.1952, it was clearly showing that she was an occupant of the property in question prior to 1.1.1952, although the damage receipt was not with her." The counter affidavit continues to state that her case was again put up on sympathetic grounds to the Vice Chairman, DDA on 27.12.2002 and it was decided that the said issue would be decided by the Committee already constituted.

14. The counter affidavit explained that the Committee rejected the request on the following grounds:

> "(a) That she has submitted a photocopy of Refugee Regn. Certificate duly attested issued in name of Sh. Chunni Lal, father of Sh. Nand Kishore and on the basis of which Sh. Chunni Lal was already allotted a plot under Category 'A'. She has not submitted the Refugee Regn. Certificate of Sh. Nand Kishore, which is essential for allotment under Category 'A' in his own right.
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> (b) She has not submitted voter list of 1951 which is necessary for allotment under category A & B as per policy.
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> (c) Photo copy of Ration card of 1950 submitted by the Petitioner cannot be relied upon as the code of ration card does not match with the Ration Card of 1948 earlier submitted by the husband of the Petitioner and also the same was not produced by the Petitioner ever before."

Accordingly the DDA reiterated its stand of not acceding to the request of the petitioner for an allotment of category 'A' plot.

15. This petition was heard at some length on 22.1.2007 when this Court passed the following Order:

"In this matter it is unfortunate that despite a very categorical finding by the permanent Lok Adalat of the DDA to the effect that "the case of the petitioner is proved and fully substantiated for including name of Shri Nand Kishore now Smt. Darshna, petitioner for allotment of plot in category A under the Gadgil Assurance Scheme" way back on 29.7.2003, the petitioner was "for the purposes of settlement" made to agree to scale down her entitlement to a category B entitlement.

Three years passed and still the possession of even the category B plot was not given to the petitioner. When the matter came up before the Lok Adalat on 25.7.2006 the petitioner out of sheer desperation stated that she did not want to give up her entitlement for category A plot, now that more than 3 years had passed without her getting any plot whatsoever.

To this Court it appears that there was no justification for DDA no to abide by the categorical findings of the permanent Lok Adalat held on 29.7.2003 that the petitioner was entitled to a category A plot under the Gadgil Assurance Scheme. It also chose not to challenge those findings. Still it continued to deny here the possession of even a category B plot. The action of the DDA in again referring the matter to a Committee after the decision of the permanent Lok Adalat appears to this Court to be wholly unjustified.

Learned counsel fort the DDA, Mr. Amit Sapra, states that he will once again seek instructions whether the petitioner would without any further delay and in any event not later than 4 weeks from today be given a Category A plot so that this entire dispute can be resolved.

At his request matter is adjourned to 28.2.2007."

16. Pursuant to the above Order an affidavit has been filed by Shri B.S.Jaglan O.S.D (D.S.B), DDA on 16.3.2007 stating as follows:

"The Respondent again considered the case of the Petitioner for allotment of Category-A plot and found that the following documents are required for getting allotment of Category- A Plot as per the rules:

(i) Refugee Registration Certificate.
(ii) Receipt for payment of damage from 1.1.1952.
(iii) Extract from Voter List of 1951.
(iv) Census Slip of 1950.
(v) Ration Card of 1950.
(vi) Present Ration card to prove continuous occupation.
(vii) Any other proof i.e. correspondence at the site of occupation.

The Petitioner has submitted following documents:

(i) Census of Squatters of 1960 issued in the name of Shri Nand Kishore.
(ii) Copy of Refugee Registration Certificate.
(iii) Damages Assessment Notice in the name of Shri Nand Kishore.
(iv) Copy of old Ration Card of 1950 issued in the name of Shri Nand Kishore.

It is submitted that in the Ration Card submitted by Shri Nand Kishore, his address has been given as 10479, Pusa Road, Delhi and his age at the time of issuing the said Ration card has been shown as 16 years old.

It is submitted that the Refugee Registration Card/Resettlement card submitted by Shri Nand Kishore was issued by the Government of East Punjab (Department of Rehabilitation) in favour of one Shri Chuni Lal and the Place has been indicated as Ferozpur Cantt which proves that the person concerned has settled at Ferozpur or in some where in Punjab but not in Delhi or in 8A, W.E.A. Karol Bagh, Delhi.

Although the list of squatters show the name of Shri Nand Kishore in occupation of 8A, W.E.A. Karol Bagh, Delhi from 1948 but no proof of continued possession has been submitted by Shri Nand Kishore or by the Petitioner."

17. The narration of the facts would show that the grounds now adduced by the DDA were already considered by the PLA. For instance, the point that the Refugee Registration Card indicated the name of Shri Chunni Lal, the father of the petitioner was made before the PLA. It had been pointed out that Shri Chunni Lal was indeed a refugee and was already allotted a plot in his own name. The affidavit now filed by the DDA on 16.3.2007, without referring to the fact that Shri Chunni Lal is the father of Shri Nand Kishore, advances a new point that Shri Chunni Lal had settled at "Ferozpur or somewhere in Punjab but not in Delhi or 8A, W.E.A. Karol Bagh, Delhi." In fact this was never the case of the DDA in the numerous hearings that took place before the PLA or even in the counter affidavit filed in these proceedings. In fact, even the Committee which earlier examined the matter on 29.7.2002 acknowledged that Shri Chunni Lal was already allotted a plot under category A.

18. The other point that the petitioner was himself not issued a refugee registration certificate in his name has also been considered by the PLA. Reference has been made by the PLA to the two ration cards which go to show that the petitioner was residing in W.E.A. Karol Bagh from 1948 onwards. In the affidavit now filed on 16.3.2007, the DDA contended that "no proof of continued possession had been submitted by Shri Nand Kishore or by the petitioner" completely ignoring the voluminous evidence produced before the PLA as has been noted by PLA in its Order dated 29.11.2003.

19. It is surprising that when petitioner's case has been approved for a Category B allotment and the only question was whether she would be entitled for Category A and an affidavit was called for from

the DDA for that purpose, the DDA has now filed an affidavit to contend that the petitioner is not entitled to be allotted any plot whatsoever. This contradicts the numerous proceedings that have taken place in which the DDA itself had participated. It completely ignores the categorical findings of the PLA that a case for inclusion of the petitioner for allotment of a plot under category A under the Gadgil Assurance Scheme "is proved and has been fully substantiated." The point that the Ration Card of 1950 cannot be relied upon also does not hold water since the PLA has considered that document while coming to the aforementioned conclusion.

20. This Court cannot but express its displeasure at the stand of the DDA in not taking note of categorical findings of fact arrived at by the PLA and the fact that the Vice Chairman, DDA had himself approved the allotment of a Category 'B' plot to the petitioner. At no point in time has the DDA challenged the findings of the PLA. This Court disapproves of the refusal by the DDA to abide by the decision of the PLA which was set up by it pursuant to the decision of this Court in ***Abdul Hassan v. Delhi Vidyut Board*** AIR 1999 Delhi 88. Further the Permanent Lok Adalat has also received statutory recognition under Sections 22 and 22-A to 22-E of the Legal Services Authorities Act, 1987 (LSAA). In that view of the matter it must be held that as far as the present case is concerned, the findings on fact by the PLA as recorded in its proceedings dated 29.7.2003 that "case of the petitioner is proved and fully substantiated for including the name of Shri Nand Kishore now Smt. Darshana, petitioner for allotment of plot in Category-A" is binding on the DDA.

21. As regards the concession made by the petitioner agreeing to

“scale down her entitlement for allotment of an accommodation under Category 'B'”, the petitioner is fully justified in contending that she has made this concession out of sheer desperation having waited for an allotment for several years. However the subsequent events show that such a concession by the petitioner did not move the DDA which took over two years to issue an allotment letter. Thereafter for about one year the petitioner was made to wait for being given possession. Naturally by the time the matter came up for consideration again before the PLA on 25.7.2006 the petitioner had a rethink about such concession. Giving the conduct of the DDA in the present matter the insistence of the petitioner that her right to an allotment under category 'A' should be recognised and enforced can hardly be found fault with. On the other hand the refusal by the DDA to see reason in the matter is totally inexplicable.

22. This Court finds that the failure by the DDA to allot to the petitioner a Category 'A' plot under the Gadgil Assurance Scheme, in the facts and circumstances of the present case is unreasonable and unsustainable in law. Accordingly, the writ petition is entitled to succeed. A direction is issued to the DDA to allot to the petitioners a category 'A' plot under the Gadgil Assurance Scheme by issuing an allotment letter in their names within a period of four weeks from today and in any event not later than 22.5.2007. Upon the petitioners completing all formalities within a further period of 2 weeks from the date of issuance of such letter, the petitioner will be put in possession of the plot in question within a further period of four weeks. The petitioners having been made to wait for all these years for justice would be entitled to costs of this petition. The DDA is directed to pay to the petitioner No.1 costs in the sum of Rs. 15,000 within 4 weeks

from today and in any event not later than. 22.5.2007.

23. With the above directions, the writ petition is allowed and all other applications are disposed of.

APRIL 20, 2007 **S. Muralidhar, J.**
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